

the Lender to reduce the borrower's monthly payment during the early years of the loan. The maximum reduction which may be considered is 2 percent below the note rate, even though the actual buydown may be for more. Reductions in buydown assistance may not result in an increase in the interest rate paid by the borrower of more than 1 percent per year. The borrower shall not be required to repay escrowed buydown funds. Funds must be escrowed with a state or federally supervised Lender. Funded buydown accounts must be fully funded for the buydown period. Buydown periods must be at least 12 months for each 1 percent of the buydown.

**§§ 1980.393–1980.396 [Reserved]**

**§ 1980.397 Exception authority.**

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart or address any omission of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that application of the requirement, or provision, or failure to take action in the case of an omission would adversely affect the Government's financial interest. The Administrator will exercise this authority upon request of the State Director with the recommendation of the Assistant Administrator for Housing. Requests for exception must be made in writing accompanied by the borrower's casefile in cases involving specific borrowers and supported with documentation to explain the adverse effect, propose alternative courses of action, and to show how the adverse effect will be eliminated or minimized if the exception is granted.

**§ 1980.398 Unauthorized assistance and other deficiencies.**

(a) *Unauthorized assistance.* Unauthorized assistance includes, but is not limited to, issuance of a loan note guarantee when the borrower was not eligible for the loan or the borrower was eligible but the loan was not made for authorized purposes. Unauthorized assistance in the form of interest assistance is discussed in § 1980.390.

(b) *Initial determination of unauthorized assistance.* The reasons for unauthorized assistance being received by the Lender may include:

- (1) Submission of false or inaccurate information by the Lender;
- (2) Submission of false or inaccurate information by the borrower;
- (3) Error by RHS personnel; or
- (4) Error by the Lender.

(c)–(d) [Reserved]

(e) *Categories of unauthorized assistance*—(1) *Minor deficiency.* A minor deficiency is one that does not change the eligibility of the borrower, the eligibility of the property, or amount of the loan. Such incidents will be brought to the Lender's attention in writing. Examples of minor deficiencies include improperly completed builder certifications, use of an outdated credit report, or use of an outdated income verification. Minor deficiencies also include those significant deficiencies when the Lender is willing and able to correct the problem such as obtaining flood insurance for a dwelling located in a flood hazard area and assuring the escrow amount is sufficient.

(2) *Significant deficiency.* A significant deficiency is one that creates a significant risk of loss to the Government, or involves acceptance of a borrower or property not permitted by Agency regulations. Such cases may result in probation or withdrawal of the Lender's approval for program participation. Examples of significant deficiencies include gross miscalculation of income, acceptance of property that is severely deficient of the required standards, missing builder certifications, and construction changes that materially affect value without proper change orders.

(3) *Fraud or misrepresentation.* A deficiency that involves an action by the Lender to misrepresent either the financial capacity of the borrower or the condition of the property being financed may, in addition to any criminal and civil penalties, result in a withdrawal of RHS approval, or debarment. Examples of this type of deficiency include falsified Verifications of Employment, false certifications, reporting a delinquent loan as being current, and omitting conditions relating to the health and safety of a property.

(f) *Borrower noncompliance.* When the borrower receives unauthorized assistance due to an error or oversight, the Lender may continue with the guaranteed loan. More serious violations will be viewed on a case-by-case basis by the National office.

(g) *RHS error oversight.* When the borrower receives unauthorized assistance solely due to an error or oversight by RHS, the Lender may continue with the guaranteed loan.

**§ 1980.399 Appeals.**

The borrower and the Lender respectively can appeal an RHS administrative decision that directly and adversely impacts them. Decisions made by the Lender are not covered by this paragraph even if RHS concurrence is required before the Lender can proceed. Appeals will be conducted in accordance with the rules of the National Appeals Division, USDA.

(a) *Appealable decisions.* (1) The borrower and the Lender must jointly execute the written request for an alleged adverse decision made by RHS. The Lender need not be an active participant in the appeal process.

(2) The Lender only may appeal cases where RHS has denied or reduced the amount of a loss payment to the Lender.

(b) *Nonappealable decisions.* (1) The Lender's decision as to whether to make a loan is not subject to appeal.

(2) The Lender's decision to deny servicing relief is not subject to appeal.

(3) The Lender's decision to accelerate the account is not subject to appeal.

**§ 1980.400 [Reserved]**

**Subpart E—Business and Industrial Loan Program**

SOURCE: 52 FR 6501, Mar. 4, 1987, unless otherwise noted.

**§ 1980.401 Introduction.**

(a) Direct Business and Industry (B&I) loans are disbursed by the Agency under this subpart. B&I loan guarantees are to be processed and serviced under the provisions of subparts A and B of part 4279 and subpart B of part 4287 of this title. Any processing or serv-

icing activity conducted pursuant to this subpart involving authorized assistance to relatives, or business or close personal associates, is subject to the provisions of part 1900 subpart D of this chapter. Applicants for this assistance are required to identify any known relationship or association with any Agency employee.

(b) The purpose of the B&I program is to improve, develop or finance business, industry and employment and improve the economic and environmental climate in rural communities, including pollution abatement and control. This purpose is achieved through bolstering the existing private credit structure through guarantee of quality loans which will provide lasting community benefits. It is NOT intended that the guarantee authority be used for marginal or substandard loans or to "bail out" lenders having such loans.

(c) This subpart and its appendices (especially appendix I and appendix K) also contain regulations for Drought and Disaster (D&D) and Disaster Assistance for Rural Business Enterprises (DARBE) guaranteed loans authorized by section 331 of the Disaster Assistance Act of 1988 (Pub. L. 100-387) and section 401 of the Disaster Assistance Act of 1989 (Pub. L. 101-82). D&D loans must be to alleviate distress caused to rural business entities, directly or indirectly, by drought, hail, excessive moisture, or related conditions occurring in 1988, or to provide for the guarantee of loans to such rural business entities that refinance or restructure debt as a result of losses incurred, directly or indirectly, because of such natural disasters and are limited to a guarantee of principal only. DARBE loans must be to alleviate distress caused to rural business entities, directly or indirectly, by drought, freeze, storm, excessive moisture, earthquake, or related conditions occurring in 1988 or 1989, or to provide for the guarantee of loans to such rural business entities that refinance or restructure debt as a result of losses incurred, directly or indirectly, because of such natural disasters and within certain parameters guarantee both principal and interest.

(d) The B&I loan program is administered by the Administrator through a State Director serving each State. The